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Customer No.: 26308

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Nelson et al.

Docket No.: 9473.18567

Serial No.: 10/806,372

Examiner: Unknown

Filed: 22 March 2004

Group Art Unit: 3732

Title: Devices, Systems, and Methods to Fixate Tissue within the Regions of the Body,
Such as the Pharyngeal Conduit

**RENEWED PETITION FOR AN UNINTENTIONALLY DELAYED
BENEFIT CLAIM PURSUANT TO 37 C.F.R. §1.78(a)(3)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests to amend the benefit claim under 35 U.S.C. §120 of the above-noted application, as follows in marked-up form:

This application ~~claims the benefit~~ is a continuation-in-part of co-
pending United States Patent Application Serial No. 10/718,254,
filed November 20, 2003 and entitled "Devices, Systems, and
Methods to Fixate Tissue Within the Regions of the Body, Such as
the Pharyngeal Conduit,"[;] and a continuation-in-part of co-pending
United States Patent Application Serial No. 10/656,861, filed
September 6, 2003 and entitled "Magnetic Force Devices, Systems,
and Methods for Resisting Tissue Collapse within the ~~Pharyngeal~~
Pharyngeal Conduit,"[;] both of which claim the benefit of United
States Provisional Patent Application Serial No. 60/441,639, filed
January 22, 2003, and entitled "Magnetic Splint Device and Method
for the Treatment of Upper Airway Collapse in Obstructive Sleep
Apnea," and United States Provisional Patent Application Serial No.

03/01/2005 YPDLITE1 00000005 10806372
01 FC:1454
1370.00 OP

60/456,164, filed March 20, 2003, and entitled "Device and Method for Treatment of Sleep Related Breathing Disorders Including Snoring and Sleep Apnea." This application is also a continuation-in-part of co-pending United States Patent Application Serial No. 10/236,455, filed September 6, 2002 and entitled "Systems and Methods for Moving and/or Restraining Tissue in the Upper Respiratory System,"; ~~and United States Provisional Patent Application Serial No. 60/441,639, filed January 22, 2003 and entitled "Magnetic Splint Device and Method for the Treatment of Upper Airway Collapse in Obstructive Sleep Apnea," and United States Provisional Patent Application Serial No. 60/456,164, filed March 20, 2003 and entitled "Device and Method for Treatment of Sleep Related Breathing Disorders Including Snoring and Sleep Apnea,"~~ which are each incorporated herein by reference.

Applicant states that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of 37 C.F.R. §1.78 and the date the claim was filed was unintentional.

A Preliminary Amendment amending the benefit claim as proposed herein is attached.

Applicant hereby petitions for acceptance of the unintentionally delayed benefit claim.

The requisite fee under 37 C.F.R. §1.17(t) was previously submitted on 2 November 2004.

Respectfully Submitted,

By Patricia A. Limbach
Patricia A. Limbach
Registration No. 50,295

RYAN KROMHOLZ & MANION, S.C.

Post Office Box 26618

Milwaukee, Wisconsin 53226

(262) 783 - 1300

7 February 2005

Customer No.: 26308

Apprison/18567/150207 Reserved Prevision Under 37 C.F.R. 1.78(a)(2)

Enclosures: Copy of Preliminary Amendment
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Applicant: Nelson et al.

Docket No.: 9473.18567

Serial No.: 10/806,372

Examiner: Unknown

Filed: 22 March 2004

Group Art Unit: 3732

Title: Devices, Systems, and Methods to Fixate Tissue within the Regions of the Body,
Such as the Pharyngeal Conduit

PRELIMINARY AMENDMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

INTRODUCTORY COMMENTS

Please amend the application prior to the first Office Action as follows:

AMENDMENTS TO THE SPECIFICATION

Please amend the Related Applications paragraph beginning on page 1, line 5 as follows in marked-up form:

This application ~~claims the benefit~~ is a continuation-in-part of co-pending United States Patent Application Serial No. 10/718,254, filed November 20, 2003 and entitled "Devices, Systems, and Methods to Fixate Tissue Within the Regions of the Body, Such as the Pharyngeal Conduit,"[;] and a continuation-in-part of co-pending United States Patent Application Serial No. 10/656,861, filed September 6, 2003 and entitled "Magnetic Force Devices, Systems, and Methods for Resisting Tissue Collapse within the ~~Pharyngeal~~ Pharyngeal Conduit,"[;] both of which claim the benefit of United States Provisional Patent Application Serial No. 60/441,639, filed January 22, 2003, and entitled "Magnetic Splint Device and Method for the Treatment of Upper Airway Collapse in Obstructive Sleep Apnea," and United States Provisional Patent Application Serial No. 60/456,164, filed March 20, 2003, and entitled "Device and Method for Treatment of Sleep Related Breathing Disorders Including Snoring and Sleep Apnea." This application is also a continuation-in-part of co-pending United States Patent Application Serial No. 10/236,455, filed September 6, 2002 and entitled "Systems and Methods for Moving and/or Restraining Tissue in the Upper Respiratory System," ~~; and United States Provisional Patent Application Serial No. 60/441,639, filed January 22, 2003 and entitled "Magnetic Splint Device and Method for the Treatment of Upper Airway Collapse in Obstructive Sleep Apnea," and United States Provisional Patent Application Serial No. 60/456,164, filed March 20, 2003 and entitled "Device and Method for Treatment of Sleep Related Breathing Disorders Including Snoring and Sleep Apnea,"~~ which are each incorporated herein by reference.

REMARKS

The priority claim has been amended to more particularly state the relation of several related applications. A Renewed Petition for an Unintentionally Delayed Benefit Claim Pursuant to 37 C.F.R. §1.78(a)(3) and is submitted herewith.

Entry of this Preliminary Amendment is respectfully requested.

Respectfully Submitted,

By Patricia A. Limbach
Patricia A. Limbach
Registration No. 50,295

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Apuscon/18M1/000207 Preliminary Amendment

Enclosures: Amendment Transmittal Letter
Copy of Renewed Petition Under 37 CFR 1.78
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CERTIFICATE OF FIRST CLASS MAIL

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, with sufficient postage, on the date indicated below in an envelope addressed as follows: Mail Stop Petition, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

By: Linda S. Wenzel

Dated: 7 February 2005

Linda S. Wenzel